

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1180 OF 2001

Shri.Salil S.Butala]
age 40 yrs. Occ: Advocate]
residing at Ketan Niwas,]
Flat No.7, Tembi Naka,]
Dhobiali, Thane]..Petitioner

Vs.

1. M.B.Pawar,]
Asstt.Public Prosecutor]
Dist.Sessions Court,]
Building, Palghar]
2. Dist.Govt. Prosecutor,]
Dist. & Sessions Court,]
Thane]
3. State of Maharashtra]
through Secretary,]
Law and Judiciary]
Department, Mantralaya,]
Mumbai-32]..Respondents

Shri.Bipin A.Jogoje i/b S.S.Butala Petitioner in
person
Mrs.A.S.Pai A.P.P. for State

....

CORAM: D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI, JJ.

DATE : MARCH 7, 2006

ORAL ORDER:

1. Advocate from Thane, has filed this petition
for quo-warranto because, according to him,
Respondent No.1-M.B.Pawar, acted as an Assistant

Public Prosecution even though he was not appointed by the Government or he had no authority to represent the State. From the record, it reveals that this petitioner had filed criminal writ petition No.737 of 2001 which came up before the learned Single Judge on 17th July, 2001 and Mr.Justice A.B.Palkar after noticing the submissions made by the petitioner, asked him that whether he is ready to face the consequences of making bald allegations against the Sessions Judge, thereafter the petitioner who was present in person, withdrew this petition. No liberty was granted to the petitioner to file another petition.

2. However, it appears that the same petitioner filed another writ petition No.1091 of 2001 and when this writ petition came up before the Division Bench presided over by Mr.Justice Vishnu Sahai on 20th August, 2001, he prayed for withdrawal of the petition. While doing so, the Court observed that "It would be open to him to seek appropriate remedy, if open to him in law." Now that liberty is being utilised by the petitioner by fling the present petition.

3. This petition is obviously not maintainable because, if at all the petitioner has right to challenge something by way of writ petition, when he withdrew the first petition i.e. writ petition No. 737 of 2001 before Justice A.B.Palkar, no liberty was granted to him to file another petition. Even then he filed subsequent petition i.e. W.P.No.1097 of 2001. He also withdrew the said petition. Therefore, remedy by way of filing writ petition is exhausted and the liberty granted to the petitioner at the time of withdrawal of second petition by the Division Bench is certainly not for filing another petition of same type and nature. Obviously, the petitioner may adopt appropriate remedy to move the Government for taking action against the respondent no.1 if permissible by law or at the most for the charges of fees he may have recovered. As such, the petition involving the similar issues, is not maintainable and hence, it is dismissed. Rule is discharged.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI, J.]